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THE INTERIM

OCTOBER 1999

HELENA, MONTANA

VOL. XII NO. 5

THE INTERIM INTRODUCES NEW FEATURE

Census Information Every Month..."The Census is coming, the Census is coming!" Beginning this month, *THE INTERIM* will print an article every month on the upcoming Census 2000. The purpose of the articles is to build an awareness of the importance of the census and the need for a complete and accurate count. Montana may gain back a second Congressional seat if the census numbers show a second seat is warranted. Legislators should pay particularly close attention to the census as legislative districts will be redrawn as a result. The monthly article will be titled "Countdown to Census 2000" and will be found immediately preceding **THE BACK PAGE** every month.

LEGISLATIVE COUNCIL

Council Holds Planning Session...The Legislative Council met for a planning session on August 26 and 27 and for a regular meeting on September 17. A principal item of business at the September meeting was establishing priorities from among the issues identified at the August session. Here are the top three priorities:

PRIORITY ONE

1. What is the issue?

How can the Council educate the public about the legislative process?

2. Why is this an issue?

The legislative process is a fairly complicated matter and the public doesn't understand how the budgeting process works or what term limits mean and doesn't trust government or the Legislature. Term limits create an impetus to make more effort in this area. Educating the public about

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the legislative process is one of the Council's specific mission statements, but one which has not been actively performed by the Council.

3. What are the consequences of not addressing this issue?

A less informed public; misunderstanding about the process, resulting in further distrust of government; less understanding of and support for government; and the system not working because fewer people want to serve and don't get supported when they do serve. This could lead to less legislative implementation of the public interest.

4. How will the Council develop strategies for this issue?

The Council has authorized the appointment of a subcommittee to undertake a study of televising legislative proceedings that will also undertake this task of educating the public.

PRIORITY TWO

1. What is the issue?

Can the Council develop a training program for new legislators to prepare for session and for constituent services? Because of term limits, how can new members be educated?

2. Why is this an issue?

There is a need to get legislators on board as fast as possible, especially with term limits. The Council's leadership mission aimed at efficient operation and improvement of the branch combines with threats of expanding power in executive and lobbying areas to suggest this as a particularly timely issue.

3. What are the consequences of not addressing this issue?

Legislators not trained and knowledgeable about the system. Balance between the 3 branches of government. [Note: in discussing this issue, the Boys' State training model was mentioned and could be a part of a strategy to address this issue.] Loss of an opportunity for Council effectiveness and erosion of legislator effectiveness in the constituent service (representational) aspects of the legislator's role.

4. How will the Council develop strategies for this issue?

The Council asked staff to develop a report detailing legislator training approaches taken in the past and in other states. This information will be used to design programs and develop strategies to help develop legislator skills more quickly.

PRIORITY THREE

1. What is the issue?

How can the Council promote more interaction with legislators from other states?

2. Why is this an issue?

In our fast changing world, we as a state need to be more involved. The lack of financial resources to participate in national organizations has limited opportunities.

3. What are the consequences of not addressing this issue?

Isolation from national and global ideas and abilities.

4. How will the Council develop strategies for this issue?

The Council as a whole will continue to educate itself on opportunities for interaction with other states and support Montana's participation in organizations that foster interstate communication through active budget development and support activities.

To Work on Director Replacement Process...The Personnel Subcommittee of the Council reported on its approach to developing a plan for recruiting and selecting a person to serve as Executive Director. The Subcommittee plans to meet with leadership from the other primary administrative committees in the Branch and with a variety of staff prior to completing an in-depth study of the position. They will develop recommendations on a process to present to the Legislative Council at its January 28 meeting.

Considers Bid to Host CSG...Montana's participation in interstate organizations all but stopped with the challenging budget years of the 80's and early 90's. As noted in "Priority Three" above, concern about continued lack of participation is growing among Council members and other legislators. The President of the Senate, Sen. Bruce Crippen, referred an invitation for Montana to submit a bid to host the annual meeting of CSG-West to the Council for consideration. After hearing from a representative of the organization and discussion, the consensus was that this remains an important issue but that Montana needs to regain experience in participating with CSG before committing to a major responsibility such as hosting a large meeting.

HJR 18 Subcommittee Formed...LSD Research Analyst Stephen Maly presented a proposal for conducting the study of broadcasting the Legislature chartered by HJR 18. Rep. Red Menahan, Council Chair, will designate the members of an HJR 18 Subcommittee soon. The Subcommittee has been invited to observe the legislative television operation in the State of Washington now considered the "state of the art" in this field and will likely do so late in October or early in November. As noted above, this subcommittee is tasked to consider this study also in the broader context of improving the public education activities of the Legislature.

Council Recognizes Staff Efforts...The Legislative Services Division and Code Commissioner succeeded in producing and delivering the Montana Code Annotated to subscribers over a month earlier than has ever been done before. This was despite the special session and moving the entire office. The Council recognized the dedication of all the staff involved in this accomplishment and expressed their great appreciation

for it.

Council Agrees to Easement...The State Land Board consulted the Council about giving an easement across the Stillwater River at Lawrence Park in Kalispell. The Council agreed the proposal was in order.

Council Discusses Subcommittees...Interim committees must receive Council approval for subcommittees under provisions of Senate Bill 11. Details are not yet worked out on how to implement this provision efficiently. The Council will consider this further at its January meeting, but in the mean time, the Council has approved interim committees establishing one or two subcommittees operating within the allocated budget.

Council Tours Capitol...Finally, the Legislative Council, in its role as a planning entity for the Capitol, toured the building. Construction is proceeding on schedule. A great deal of new information about prior decor has been revealed as the project has proceeded. Colors and details in the rotunda area will benefit greatly in terms of historic restoration based on the uncovered detail. Barrel vault construction and the opening of the fan window area on the upper levels of the rotunda are spectacular already, despite being still heavily under construction. Architects remain confident that the Legislative Services and Legislative Fiscal Divisions will return to the building on schedule in early June 2000. The moves of the Secretary of State and Legislative Audit Division from the building, however, have been delayed by factors outside the control of the state, resulting in space not being available yet. Those moves may occur by December of this year.

BUSINESS, LABOR, AND AGRICULTURE COMMITTEE

To Meet in October...The Business, Labor, and Agriculture Committee will meet in Helena on October 8 at the Montana Association of Counties building located at 2715 Skyway Drive near the Helena Airport. The meeting will begin at 8 a.m.

A number of administrative issues will be discussed during the morning session, including the process, authority, and responsibility given to the Committee regarding the review of proposed agency rules. The Committee will spend the remainder of the morning considering the proposed study plan for the government competition with private vendors study. The Committee encourages public ideas on the issue of how best to address a solution to public-private competition.

The afternoon session will cover the upcoming Supreme Court case dealing with House Bill No. 260 and its mechanism for funding the state's economic development package. Additionally, the Departments of Agriculture and Commerce will provide presentations to Committee members on a number of program areas.

For directions to the MACO Building, or other information about the Committee's

activities, contact Gordy Higgins at 444-3064, or at gohiggins@state.mt.us.

LEGISLATIVE SERVICES DIVISION

MCA Available Well Ahead of Schedule... Full sets of the Montana Code Annotated (MCA) were mailed to subscribers on August 31, 1999. The MCA is a compilation of new and existing general and permanent state statutory law. This is the earliest time that the MCA has been available since its inception in 1979. The statutory deadline for producing the MCA is October 1 of each year following the legislative session. The timely production of the MCA was accomplished in spite of the moving of the Legislative Services Division from the Capitol to other offices and a two day Special Session of the Legislature. At its September 17 meeting, the Legislative Council commended the LSD staff for the achievement. The Code Commissioner attributes the accomplishment to an experienced and dedicated staff. The CD-ROM version of the MCA is scheduled to be available by early October. The Index to the MCA should be sent to subscribers by the end of October.

Session Laws were sent to subscribers the week of Sept. 20-24. The "History and Final Status" is scheduled to be delivered to Legislative Services on September 27 and will be distributed to subscribers shortly thereafter.

For questions or ordering information regarding any of these publications, please call the Legislative Services Division at (406)444-3064.

LIBRARY

The following legal memorandum is available from the Legislative Library:

"The Structure of Higher Education in Montana: Meandering the Murky Line"

Eddye McClure

For a copy, call 444-3064 or e-mail a request to efurbush@state.mt.us.

LAW, JUSTICE, AND INDIAN AFFAIRS COMMITTEE

Committee Visits Women's Prison... A full agenda greeted the 12 members of the Law, Justice, and Indian Affairs Committee (LJIAC) on September 16 and 17 as members gathered at the Montana Women's Prison (MWP) in Billings for the Committee's second meeting of the 1999-2000 interim.

A tour of the prison was the first order of business, followed by a discussion with MWP Warden Jo Acton of the educational and training programs available to inmates. Department of Corrections (DOC) Director Rick Day provided LJIAC members (many of whom are new to the corrections arena) with an overview of the DOC and an update on populations at the state, regional, and private prisons. The LJIAC received

an update on the planned expansion of MWP, a project that was approved by the 1999 Legislature and funded by \$6,475,000 in federal dollars authorized in House Bill No. 5 and \$2,900,000 in general obligation bonds authorized in House Bill No. 14.

Committee Discusses Prison Chapel...The MWP expansion discussion led to a discourse about the construction and placement of a chapel on the MWP campus. The Committee had learned that approximately 26% of the women incarcerated at MWP and in contract beds in New Mexico are Native American-- a figure that is significantly higher than the percent of Native Americans statewide, which is between 8% and 10%. Wyman McDonald, the state Coordinator of Indian Affairs, expressed concern to the Committee that the chapel may not be constructed and situated properly to meet the spiritual needs of the prison's Native American inmates. Because the 1997 Legislature had given its consent for construction of a chapel at MWP through House Joint Resolution No. 24 and because the chapel will be constructed using private funds, the state's authority is limited to advisory in determining the specifics of chapel construction, even though the structure will be located on state property. The LJAC adopted a motion to recommend to the MWP Advisory Committee and the Chapel Committee that the chapel be constructed and situated in such a manner that the diverse spiritual needs of all of the inmates are adequately addressed.

Committee Adopts Work Plan...During the Committee's afternoon session, members discussed the interim work plan and adopted it, recognizing that items appearing on the plan may change as the interim progresses. The Committee also designated three members, Representatives Shockley, McGee, and Gutsche, to serve on the Environmental Quality Council's Eminent Domain Subcommittee.

Committee Adopts Two Study Plans...Friday's Committee activities included a presentation of the study plan for House Joint Resolution No. 12 (HJR 12), a study of a proposed Commission on Indian Affairs and a discussion of that proposal with members of the Montana-Wyoming Tribal Leaders Council. The Committee also heard a presentation on the Senate Joint Resolution No. 14 (SJR 14) study of sentencing statutes, data, information collection and management, and related issues. The LJAC adopted both study plans and decided not to appoint subcommittees, preferring instead that the whole Committee receive the education and experience in sentencing and Indian affairs issues.

For information on the LJAC, contact Leanne Kurtz at lekurtz@state.mt.us; for information on the HJR 12 study, contact Connie Erickson at cerickson@state.mt.us; for information on the SJR 14 study, contact Susan Fox at sfox@state.mt.us. The staff listed can also be reached at 444-3064.

CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES COMMITTEE

Committee Objects to Rules...On September 23, Senator Mignon Waterman, on behalf of the members of the Children, Families, Health, and Human Services Committee, sent a letter to the Department of Public Health and Human Services stating the Committee's objections to Rule X of the network adequacy rules for managed care. Rule X provides an exception to the geographic access criteria where a health carrier has documented a good faith effort to negotiate a contract with local providers. The Committee will place this issue on the agenda for its meeting on November 19 and consider some options on how best to proceed.

To Meet in November...The next meeting of the Committee will be held on November 19 and will include standing reports on the various mental health committees, the request to the State Administration Committee to monitor Project Challenge, and other reports required by House Bill 2. The main study topics will include dental care access, CHIP, and TANF and related welfare issues. Public testimony will be received at the meeting.

If you wish to be placed on the interested persons' list, please contact Susan Byorth Fox by phone at (406) 444-3597, by e-mail at sfox@state.mt.us, or by mail at Legislative Services Division, PO Box 201706, Helena MT 59620-1706.

DISTRICTING AND APPORTIONMENT COMMISSION

Commission Preparing for Work...The Districting and Apportionment Commission has not yet scheduled but plans to hold a meeting later this fall. The Commission's charge is to redistrict the state for both the congressional and legislative districts following the 2000 census. By January 1, 2001, the state will learn whether an additional congressional seat will be gained in the reapportionment of congressional seats. The census data is expected in the first months of 2001, when redistricting will begin in earnest. In the meantime, the Commission will be preparing background research, adopting a timetable for the process, selecting criteria, and making decisions on data and methodology.

If you wish to be placed on the interested persons' list, please contact Susan Byorth Fox by phone at (406) 444-3597, by e-mail at sfox@state.mt.us, or by mail to Legislative Services Division, PO Box 201706, Helena MT 59620-1706.

ENVIRONMENTAL QUALITY COUNCIL

EQC Travels to Libby...The Environmental Quality Council (EQC) traveled to Libby

for two days of productive meetings on September 22 and 23. While in Libby, the Council toured the ASARCO mine near Troy and visited the site of the proposed Keeler Mountain timber sale. The Council adopted its work plan for the interim during this meeting.

Montana Environmental Policy Act Study...The Montana Environmental Policy Act (MEPA) Study Subcommittee reviewed background information about implementation of MEPA and heard comments from interested persons about MEPA and the Council's study. The Subcommittee also reviewed written comments from a broad group of interested parties.

Water Policy Issues...The EQC adopted a work plan for the Water Policy Subcommittee. The Water Policy Subcommittee was briefed about proposed federal regulations related to Total Maximum Daily Loads (TMDLs). The EQC agreed to send a letter to the U.S. Environmental Protection Agency (EPA), requesting an extension of the comment period and requesting that the EPA establish a process whereby states that already have TMDL programs that comply with the Clean Water Act be allowed to implement those programs and not be required to change their programs to comply with new EPA rules. The EQC will also send a letter to state agencies, requesting that they act on the recommendations of Senate Joint Resolution 3 that urged state agencies to serve as role models for the implementation of best management practices for nonpoint sources of water pollution.

Land Use/Environmental Trends...The EQC also adopted a work plan for the Land Use/Environmental Trends Subcommittee. Study topics include tools to address residential development in riparian areas, implementation of the 1999 EQC growth legislation, and use of environmental indicators. The Subcommittee heard a presentation from the chair of the Sanders County Planning Board about the development of the Sanders County growth policy.

Eminent Domain Study...See "THE BACK PAGE" for more information about this EQC study. Three members of the Law, Justice, and Indian Affairs Committee have been appointed to this Subcommittee: Rep. Jim Shockley, Rep. Dan McGee, and Rep. Gail Gutsche.

Upcoming EQC Meetings...Two EQC subcommittees will meet in Great Falls on October 21. The Montana Environmental Policy Act (MEPA) Study Subcommittee will meet and the Water Policy Subcommittee will host a public meeting to hear concerns about concentrated animal feeding operations (CAFOs) and the Department of Environmental Quality's proposed general permit for these operations.

The next meeting of the full Environmental Quality Council will be Thursday, December 2.

For more information, please contact the EQC staff at 444-3742 or via the Internet at teverts@state.mt.us.

TRANSITION ADVISORY COMMITTEE

TAC Begins Second Interim...The Electric Utility Industry Transition Advisory Committee (TAC) launched into its second interim on Friday, September 24 at the Federal Building in Helena. Senator Fred Thomas was re-elected by the legislative members to serve as the Chair, and Rep. Joe Quilici was selected again to serve as Vice-Chair. The Committee briefly discussed its \$100,000 budget authorization--the funds come from private sector contributions and donations--and then proceeded to hear presentations on a variety of topics, including:

- the progress of Montana Power Company's sale of its generation assets to PP& L Global;
- the status of MPC's transition plan filing before the Montana Public Service Commission;
- the formation and evolution of Flathead Electric Cooperative's for-profit affiliate subsequent to the purchase of PacifiCorp's distribution assets in Montana; and
- the "lessons learned" to date by large industrial consumers of electricity, who have been able to choose their supplier (in accordance with laws adopted in 1997) since July 1, 1998.

In addition, Committee members heard presentations by representatives of Montana Power, Bonneville Power Administration, the Northwest Energy Alliance, the Northwest Power Planning Council, and the newly formed Montana Buyer's Cooperative, enabled by Senate Bill 406 in the 1999 legislative session.

TAC Adopts Meeting Schedule...The TAC adopted a meeting schedule for the interim. The next meeting will take place in Helena on Friday, November 5. (The exact location will be announced soon, but it will NOT be the Federal Building, as the available conference rooms are not adequate.) Subsequent meetings are scheduled for February 18, April 21, June 23, and September 8, 2000. The Committee may decide to hold one or more of these meetings in communities other than Helena.

TAC Considers Study Topics...While the Committee did not fashion or adopt a formal work plan, it did provide direction to staff regarding an annual report, due November 1 of this year, and considered the following list of substantive topics that will be addressed during the course of the interim:

- resolution of Montana Power Company (MPC) "tier 2" issues in the transition plan filed with the PSC;
- completion of the sale of MPC's generation assets to PP&L Global; distribution of resulting funds;
- administration of Universal Systems Benefits funds (Department of Revenue);
- PSC rules governing the licensure of electricity suppliers;
- Bonneville Power policy decisions affecting the amounts and prices of electricity supplied to different classes of customers in Montana and other states in the Pacific Northwest region;

- tax impacts and implications;
- customer education efforts, pilot programs;
- status of restructuring in other states, especially those in the West;
- system reliability (governance and self-governance of regional grids);
- pending federal legislation and its potential impacts and effects;
- regional price trends, especially for small, commercial and residential consumers;
- administrative rules regarding the default supplier(s);
- relationships between non-profit Co-ops and Co-op/IOU distribution systems (hybrid model);
- determining what "effective competition" means, and what to do in (or about) its absence; and
- what legislative measures (if any) are necessary to ensure the transition to competition.

The minutes from the September 24 meeting will be available in mid-October. For a copy, or for further information about the Transition Advisory Committee, please contact Research Analyst Stephen Maly at (406) 444-3064 or smaly@state.mt.us.

HOUSE JOINT RESOLUTION NO. 18

Council Assigns Subcommittee...House Joint Resolution No. 18 requests the Legislative Council to study the feasibility of broadcasting legislative proceedings. The Legislative Council decided on September 17 to assign the HJR 18 study to a subcommittee of Council members. (See article on Legislative Council, page 3). At the time of this writing, the Subcommittee has not been appointed, but once the roster is finalized, the group will settle on a suitable date for a field trip to Olympia, Washington, to witness first-hand how that state's cutting edge television program works. Meanwhile, staff has come up with a preliminary set of topics and issues that the Subcommittee (and ultimately the Council as a whole) will need to address in the course of the interim. What follows is the first cut of a prospective paper aimed at outlining the study and inviting comments and suggestions from citizens interested in learning more about the Legislature and other activities of state government through television and radio.

ELEMENTS OF A BRIEFING PAPER

The following questions and tentative, unrefined answers exemplify the shape and thrust of a briefing paper that could also include specific proposed parameters and structural elements for a capitol-based television production entity.

1. Why televise the Legislature?

Increased participation by Montana citizens in a process that can affect

their vital interests. A better-informed electorate. A source of inspiration to young voters who may want to run for office or get involved as lobbyists or staff. Improved access to the legislative process by a disparate and distant public. Boost the legitimacy of the legislature; raise its stature. Help fulfill the philosophy of open government that is rooted in the constitution and the MCA. Educate the public. As a spinoff benefit, create jobs and enhance economic development in the telecommunications sector. In sum, improve both the perception and reality of the Legislature, and, therefore, improve democracy.

2. Why not do it?

The benefits are difficult to measure accurately and scientifically, and may outweigh the costs. Providing comprehensive coverage may be more expensive than the market (legislative appropriations and a limited number of corporate donors/underwriters) will bear. There may be too few people actually interested in watching the proceedings to warrant the effort and expense. Aside from cost considerations, there are political and public relations issues to think about. For example, an anonymous observer quipped (in jest) that "if it [TV] has a chilling effect on debate, I say go for it!"

3. How to do it right?

Look at some exemplary models and focus on states in the region with comparable demographics. Consider present (including state-of-the-art) technologies and also consider the advent of new technologies. Consider the extent of citizen access to cable TV, to satellite transmission, the Internet, and FM signals, as well as the distances that separate "wired" communities. Beware politicization and the loss of bipartisan support for a nonpartisan activity. Provide adequate funding, as experience elsewhere shows that insufficient support at the outset is a recipe for failure. Optimize distribution links and channels to maximize availability and affordability for the customers--Montana citizens. Build bridges and other connections to educational institutions as well as extant broadcasting entities. Consider public/private partnership(s) to ensure efficiency and effectiveness and to enhance fundraising capacity.

4. Who's going to do it (best)?

Legislative staff? Contracted teams from a local nonprofit organization? Employees of Montana Public Television (the state's PBS affiliate, jointly administered by Montana State University and the University of Montana)? A private or public sector management team with paid student interns? Keep in mind that the Film and Television programs at MSU and UM produce a crop of graduates each year, and there may be a nonprofit production entity operating in Helena within the next 2 years.

5. How much will it cost?

Start-up costs, such as equipment purchases, infrastructure items, hiring, appointing, or contracting with staff. Maintenance costs and technological upgrades. Expansion and development costs--to serve greater numbers of citizens and to diversify the program mix to enhance viewership. Marketing and promotion costs. Much will depend on the mode(s) of broadcast and delivery to audiences across the state (see #8).

6. Who will pay?

The taxpayers via the Legislature. Large corporations with philanthropic motives and means; e.g., Montana Power Co., Washington Corporation, Montana Rail Link, US West, AT&T/TCI, ASARCO, BN, ConAgra, IBM, etc. Tax credits may be an attractive means of public finance.

7. Who will decide what gets televised and when?

Options include a Legislative Committee; the Legislative Council; or an expanded membership oversight group, including appointees from the Governor's Office, other Executive branch agencies, the Judiciary, and higher education. In some states, this important decision is left to an unaffiliated non-profit agency working at arms length from all political offices and office holders.

8. How will the television (and/or radio) signal reach Montana citizens?

Via cable, satellite, microwave, local broadcast, Internet, or some combination.

9. Who will benefit from this endeavor and in what ways? (Conversely, who might suffer?)

Those who benefit the most are likely to do so by suffering through the tedium and conundrums of real life in the Legislature. The Legislature itself may benefit by being (more often than not) on its best behavior as a dynamic institution. Certain legislators may benefit more than others as a result of having rural constituencies relatively distant from Helena or as a consequence of being more "telegenic" than their competitors in the House or Senate. A few members may suffer a loss of prestige or respect (and thus voting support), but such losses need not be irrevocable. (In other words, television can be a useful tool for self-improvement in the arenas of public speaking, public relations, and interpersonal behavior.)

10. Glossary.

To understand what's feasible, desirable, and affordable in the realm of broadcasting, Council members and others in the Legislature will need to acquire an understanding of terms such as bandwidth, uplinks, transponder, translator, optical fiber (fiber optics), interactive television, digital television, channel capacity, gavel-to-gavel coverage, audio and/or video streaming, public access, and head end.

For further information about the HJR 18 study, the Subcommittee's schedule, and opportunities for public comment as well as other types of involvement, please contact Research Analyst Stephen Maly by phoning (406) 444-3064 or by sending an e-mail message to smaly@state.mt.us.

LEGISLATIVE FINANCE COMMITTEE

To Meet in October...The Legislative Finance Committee will meet on October 7 and 8 in Room B7 of the Federal Building. The meeting will begin at 3 p.m. on October 7 and at 8 a.m. on October 8. The Committee will hear reports from various committees and subcommittees, the Department of Corrections, and MT PRRIME (SABHRS); adopt a work plan for the wildlife management study in HJR 33; hear staff reports on prison population estimates and fiscal 1999 general fund revenues and fund balance; and receive updates on the status of various interim studies.

STATE ADMINISTRATION, PUBLIC RETIREMENT SYSTEMS AND VETERANS' AFFAIRS COMMITTEE

Committee Meets at Fort Harrison...The State Administration, Public Retirement Systems, and Veterans' Affairs Committee (SAIC) met on September 9 and 10 at Fort Harrison in Helena. The SAIC members were introduced to activities of the Department of Military Affairs, the Office of the Secretary of State, the Office of the Commissioner of Political Practices, the Department of Administration, and Public Employee Retirement Board. The SAIC also conducted its first review of the interim of:

- HB 79 duties, including, the transfer of the state employee deferred compensation program from the Department of Administration to the Public Employee Retirement Board;
- developments regarding the state's optional Defined Contribution (DC) retirement plan and disability benefits for state/public retirees; and
- the study of state contracting requested in Senate Joint Resolution No. 9.

Two Subcommittees Created...Accompanying SAIC discussion was action to create two subcommittees, the first on veterans' issues and the second on HB 79 components. SAIC Chairman, Rep. Matt Brainard, will be appointing members to the subcommittees directly. The SAIC also agreed that the SJR 9 study is a project in which the entire Committee should participate fully.

To Meet in November...The SAIC will meet next on Monday and Tuesday, November 8 and 9, in Helena. Future meeting dates, agendas, and other information will be posted on the SAIC's website at <http://leg.state.mt.us/> (currently under

construction).

For further information, contact Sheri Heffelfinger at the Legislative Services Division, (406) 444-3064 or by e-mail at sheffelfinger@state.mt.us.

COUNTDOWN TO CENSUS 2000: APRIL 1, 2000

The following information was borrowed from the United States Census 2000 Frequently Asked Questions website. Visit the Census Bureau at <http://www.census.gov> to learn more about Census 2000 and what you can do to assure a successful census in your community in which everyone is counted.

Are there differences in the ways the Bureau of the Census counts big cities and small rural towns?

Improving the Census Bureau's address list is a key element in making sure they reach people everywhere in the U.S. Partnerships with local governments and American Indian tribal officials is the first step in making sure the address list is as accurate as possible. Every address will receive a letter in advance of the census, the questionnaire, and a thank you/reminder card, but the way these items are delivered will vary between big cities and rural areas.

In places where street addresses are used for mail delivery by the U.S. Postal Service, they will mail the questionnaire to the residence. In rural areas where rural route/box number, post office box, and/or general delivery addresses are used, enumerators will canvass each block before the census to create an address list of all living quarters. At the time of the census, enumerators will deliver questionnaires to each address and check the address list again to ensure that it includes every housing unit.

THE BACK PAGE

Eminent Domain -- A Well Oiled Machine?

by Krista Lee, Resource Policy Analyst

Legislative Environmental Policy Office

INTRODUCTION

Eminent domain is a topic that has become the focus of discussion across Montana - from the dinner table to the attorney's office. For a term that many had not even considered or heard of a few years ago, it has gained immense popularity. Along with popularity comes analysis and focus on the issue. The search for understanding of eminent domain has brought the Montana Codes Annotated off the shelf along with many lengthy discussions and debates. So, what exactly is eminent domain and what does it mean? How does this machine run? Answering these questions and others was the charge cast upon the Environmental Quality Council (EQC) by the Legislative Council in response to House Joint Resolution 34 (HJR 34). The EQC formed a subcommittee of its membership to study the issues. The Legislative Council also recommended that the EQC coordinate with the Law, Justice, and Indian Affairs Committee (LJIAC) on this study. In response to this recommendation there are three LJIA Committee members serving on the EQC eminent domain subcommittee.

This article is not a discussion of the findings of the study committee, but rather an outline of the basics of eminent domain. Explaining eminent domain laws and issues relating to eminent domain in any great detail would require volumes of information and probably a college level course. So, this is an overview to pique your interest and whet your appetite on the eminent domain issue.

HOW WE GOT HERE

Five bills addressing components of the eminent domain statutes were introduced during the 1999 Legislative session. While none of the bills was successful in its journey to the Governor's desk, the questions that each bill raised became the foundation of HJR 34. In requesting a study, HJR 34 allows the stakeholders an opportunity to consider the matter of eminent domain in Montana.

The Legislative Council determined that the EQC was the appropriate committee to undertake the eminent domain study. EQC formed a subcommittee of its members to research the questions and report back to the full EQC.

HJR 34 provides for three main tasks. The first urges the subcommittee to study the implementation of eminent domain laws by addressing the issues of the frequency and

distribution of condemnation actions in Montana, the types of interests in real property that are being taken when condemnations occur, and the extent to which rights-of-way are being resold or used in methods not addressed in the original condemnation complaint. This phase of the investigation will serve as a tool for better understanding the impacts that the exercise of eminent domain has on private property owners and the Montana public.

The second task asks the subcommittee to study the adequacy of the statutes as they relate to the rights of property owners and the state under eminent domain. This portion of the study includes researching legal doctrines such as due process, just compensation, burden of proof, the abandonment process, rights of reentry, reversion of property, methods for acquiring property or the use of property, and the types and restrictions on easements and the multiple uses of easements.

The third and final task asks the Subcommittee to determine, after establishing the findings and conclusions of the study, to recommend whether the state statutes relating to eminent domain are in need of revision.

THE NUTS AND BOLTS OF EMINENT DOMAIN

Eminent domain is defined in Montana statute as the right of the state to take private property for public use. The power to appropriate private property for public use is a fundamental attribute of sovereignty and is essential to the existence of government. The power of eminent domain does not depend for its existence on a specific grant of authority in the constitution or in statutory provisions, rather, it is inherent in sovereignty and exists in a sovereign state without any specific recognition. It is founded on the law of necessity. The provisions found in the state constitution relating to the taking of property for the public use do not by implication grant the power to the government of the state, but limit a power which would otherwise be without limit. Eminent domain was a power possessed by each of the original thirteen states. Whenever a new state was admitted to the United States, it was granted the same powers as the original thirteen states, including the power of eminent domain.

Article II, Section 29, of the Montana Constitution places a condition on the exercise of the power of eminent domain, and it is designed to secure compensation, not to limit governmental interference with property rights. This limit prevents the state, and any other agents with legislative authority, from depriving private persons of vested property rights except for a stated public use and upon payment of just compensation.

The public uses on behalf of which eminent domain may be exercised are outlined in 70-30-102, MCA. Title 70, chapters 30 and 31, MCA, hold the majority of eminent domain law in Montana. However, there are other MCA sections relating to eminent domain located throughout the codes. This is primarily due to the fact that each section where a particular entity is granted the authority to exercise the power of eminent domain also has language addressing the restrictions under which or the

public uses for which that entity may use eminent domain. Therefore, each eminent domain action must be researched in the codes separately because of the difference in restrictions or limits on authority based on the entity exercising the right. One of the most important components to remember is that when property is taken, regardless of the entity exercising the authority, it must be done so in a manner that results in the greatest public good with the least private injury.

THE EMINENT DOMAIN TOOLBOX

Now that the basics of eminent domain have been outlined, the tools that are required to make the eminent domain law work must be addressed. The tools that are needed to adjust the "nuts and bolts" of eminent domain are the state statutes relating to the use of eminent domain in Montana. The majority of these tools are found in Title 70, chapter 30, MCA. These statutes provide guidance on when, where, and how eminent domain can be used. Part 1 of the eminent domain statutes deals with public uses, what private property may be taken, what estates and rights in land may be taken, cases in which eminent domain may not to be used, survey and location of property to be taken, and facts necessary to be found before condemnation. Part 1 also addresses a few more specific cases, such as underground gas reservoirs.

Parts 2 and 3 of Title 70, chapter 30, MCA, address the process that must be followed if negotiations fail between the condemnor and condemnee and condemnation is necessary. These areas outline the specific steps to be followed when private property is condemned and establishes rights and responsibilities of property owners.

STUDY RESULTS -- SO FAR

The Eminent Domain Subcommittee is in the process of collecting information on various aspects of eminent domain. Because this is such a nebulous issue, it is difficult to truly get a grasp on its meaning and implications. Therefore, the Subcommittee is in the process of reviewing information relating to the historical use of eminent domain in Montana, the legal background, and the process for applying eminent domain law through condemnation, and coordination among easement holders, to name a few. At its meeting in September, the Subcommittee discussed these issues in order to finalize and adopt a work plan.

CONCLUSION

The exercise of eminent domain is currently a controversial issue in Montana. Those who have been affected or are being affected by the use of eminent domain have very

strong feelings and ideas about its use. The private entities that possess the authority to use eminent domain value and appreciate this right. Based on research conducted to date, very few condemnations occur. A majority of easements and rights-of-way are obtained through negotiations between the condemnor and the condemnee. However, for those property owners who have gone through a condemnation proceeding, it is a stressful and often frustrating experience.

The fundamental principles of eminent domain have existed since the foundation of modern government systems. Without the power of eminent domain, how would the state build infrastructure, help to ensure telephone and electrical service to all, or provide transportation routes? Eminent domain represents a crucial power the state may exercise for the public good. However, the exercise of eminent domain must also result in the least harm to private interests. The state statutes are in place to ensure that is the case.

This article scratches the surface of the eminent domain laws and issues in Montana. Through the HJR 34 study process, policy makers and citizens of Montana will have the opportunity to voice their concerns and suggestions for improving Montana's eminent domain laws. If you are interested in receiving information on the Subcommittee's progress or would like to provide input to the Subcommittee or participate in the next meeting, please contact Senator Mack Cole, Eminent Domain Subcommittee Chairman, (406) 342-5384 or Krista Lee, EQC Staff at 406-444-3957, fax 444-3036, or send e-mail to klee@state.mt.us



INTERIM CALENDAR

**UNLESS OTHERWISE SPECIFIED,
ALL MEETINGS ARE HELD IN HELENA**

OCTOBER

- October 1, Education and Local Government Committee, Federal Building, Room B7, 9 a.m.
- October 6, Mental Health Managed Care Subcommittee, Federal Building, Room B7, 8:30 a.m.
- October 7, Information Technology Study Committee, Federal Building, Room 487, 10 a.m.
- October 7, Earmarked Revenues/Statutory Appropriations Review Subcommittee, Federal Building, Room 244, 1 p.m.
- October 7-8, Legislative Finance Committee, Federal Building, Room B7
- October 8, Business, Labor, and Agriculture Committee, Montana Association of Counties building, 2715 Skyline Drive, 8 a.m.
- October 11, Columbus Day observed, holiday
- October 21, EQC MEPA Subcommittee, Great Falls
- October 21, EQC Water Policy Subcommittee, Great Falls

NOVEMBER

- November 4-5, Education and Local Government Committee
- November 5, Transition Advisory Committee
- November 8-9, State Administration, Public Retirement Systems, and Veterans' Affairs Committee

November 11, Veterans' Day, holiday

November 18-19, Law, Justice, and Indian Affairs Committee, Missoula

November 19, Children, Families, Health, and Human Services Committee

November 25, Thanksgiving, holiday

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